

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GOOD TECHNOLOGY CORPORATION and ) Case No. 5:12-cv-05827-PSG  
GOOD TECHNOLOGY SOFTWARE, INC., )  
Plaintiffs, ) **OMNIBUS ORDER RE: MOTIONS  
TO SEAL**  
v. ) **(Re: Docket Nos. 232, 239, 243)**  
AIRWATCH, LLC, )  
Defendant. )

Before the court are three administrative motions to seal several documents. “Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”<sup>1</sup> Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.”<sup>2</sup> Parties seeking to seal judicial records relating to dispositive motions bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure.<sup>3</sup>

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<sup>1</sup> *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'nns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)).

<sup>2</sup> *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

<sup>3</sup> *Id.* at 1178-79.

1           However, “while protecting the public’s interest in access to the courts, we must remain  
2           mindful of the parties’ right to access those same courts upon terms which will not unduly harm  
3           their competitive interest.”<sup>4</sup> Records attached to nondispositive motions therefore are not subject  
4           to the strong presumption of access.<sup>5</sup> Because the documents attached to nondispositive motions  
5           “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving  
6           to seal must meet the lower “good cause” standard of Rule 26(c).<sup>6</sup> As with dispositive motions, the  
7           standard applicable to nondispositive motions requires a “particularized showing”<sup>7</sup> that “specific  
8           prejudice or harm will result” if the information is disclosed.<sup>8</sup> “Broad allegations of harm,  
9           unsubstantiated by specific examples of articulated reasoning” will not suffice.<sup>9</sup> A protective order  
10           sealing the documents during discovery may reflect the court’s previous determination that good  
11           cause exists to keep the documents sealed,<sup>10</sup> but a blanket protective order that allows the parties to  
12           designate confidential documents does not provide sufficient judicial scrutiny to determine whether  
13           each particular document should remain sealed.<sup>11</sup>

14           In addition to making particularized showings of good cause, parties moving to seal  
15           documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to  
16           Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document

17           <sup>4</sup> *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

18           <sup>5</sup> *See id.* at 1180.

19           <sup>6</sup> *Id.* at 1179 (internal quotations and citations omitted).

20           <sup>7</sup> *Id.*

21           <sup>8</sup> *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002);  
22           *see* Fed. R. Civ. P. 26(c).

23           <sup>9</sup> *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

24           <sup>10</sup> *See Kamakana*, 447 F.3d at 1179-80.

25           <sup>11</sup> *See* Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that allows a party to  
26           designate certain documents as confidential is not sufficient to establish that a document, or  
27           portions thereof, are sealable.”).

1 is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under  
 2 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and  
 3 must conform with Civil L.R. 79-5(d).”<sup>12</sup> “Within 4 days of the filing of the Administrative  
 4 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection  
 5 79-5(d)(1)(A) establishing that all of the designated material is sealable.”<sup>13</sup>

6 With these standards in mind, the courts rules on the instant motions as follows:

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
232	Exhibit A to the Declaration of Joel Stonedale	UNSEALED	Not narrowly tailored to confidential business information. <i>See Civ. L.R. 79-5(d)(1)(A).</i>
232	Exhibit B to the Declaration of Joel Stonedale	UNSEALED	Not narrowly tailored to confidential business information. <i>See Civ. L.R. 79-5(d)(1)(A).</i>
232	Good’s Motion to Exclude the Opinions of Keith Rutherford and Certain Opinions of Julie Davis	UNSEALED	Not narrowly tailored to confidential business information. <i>See Civ. L.R. 79-5(d)(1)(A).</i>
239	Exhibit M to the Declaration of Geoffrey Smith	UNSEALED	Not narrowly tailored to confidential business information. <i>See Civ. L.R. 79-5(d)(1)(A).</i>
239	Exhibit P to the	UNSEALED	Not narrowly tailored

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 24 <sup>12</sup> Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed  
 25 order that is narrowly tailored to seal only the sealable material” which “lists in table format each  
 26 document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an  
 27 “unredacted version of the document” that indicates “by highlighting or other clear method, the  
 28 portions of the document that have been omitted from the redacted version.”  
 Civ. L.R. 79-5(d)(1)(d).

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 24 <sup>13</sup> Civ. L.R. 79-5(e)(1). The Civil Local Rules have recently been amended shortening the time  
 25 available to the designating party to file a supporting declaration from seven days to four days. As  
 26 this rule change was only recently implemented the court applies the prior form of Civ. L.R. 79-5  
 27 for the purposes of this order.

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1	Declaration of Geoffrey Smith		to confidential business information. <i>See</i> Civ. L.R. 79-5(d)(1)(A).
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3	239 Exhibit X to the Declaration of Geoffrey Smith	UNSEALED	Not narrowly tailored to confidential business information. <i>See</i> Civ. L.R. 79-5(d)(1)(A).
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6	239 Exhibit Y to the Declaration of Geoffrey Smith	UNSEALED	Not narrowly tailored to confidential business information. <i>See</i> Civ. L.R. 79-5(d)(1)(A).
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9	243 AirWatch, LLC's Motion for Summary Judgment of Non-Infringement	Designations in blue at Docket No. 243-7 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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12	243 AirWatch, LLC's Motion for Summary Judgment of No Direct, Indirect or Willful Infringement and of No Lost Profit	Designations in blue at Docket No. 243-8 SEALED except designation at 13:15-17 UNSEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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15	243 AirWatch, LLC's Motion for Summary Judgment of Invalidity	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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19	243 Exhibit 1 to the Declaration of Patrick McDaniel	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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22	243 Exhibit 2 to the Declaration of Patrick McDaniel	Designations in blue at Docket No. 243-34 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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25	243 Exhibit 1 to the Declaration of Jon B. Weissman	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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27	243 Exhibit 2 to the Declaration of Jon B. Weissman	Designations in blue at Docket No. 243-36 SEALED; all other	Only sealed portions narrowly tailored to confidential business
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1		designations UNSEALED.	information.
2	243	Exhibit 11 to the Hung Declaration	UNSEALED No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
3	243	Exhibit 13 to the Hung Declaration	UNSEALED No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
4	243	Exhibit 16 to the Hung Declaration	Designations in blue at Docket No. 243-15 SEALED; all other designations UNSEALED. Only sealed portions narrowly tailored to confidential business information.
5	243	Exhibit 23 to the Hung Declaration	Designations in blue at Docket No. 243-16 SEALED; all other designations UNSEALED. Only sealed portions narrowly tailored to confidential business information.
6	243	Exhibit 31 to the Hung Declaration	SEALED Narrowly tailored to confidential business information.
7	243	Exhibit 32 to the Hung Declaration	SEALED Narrowly tailored to confidential business information.
8	243	Exhibit 34 to the Hung Declaration	UNSEALED No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
9	243	Exhibit 35 to the Hung Declaration	UNSEALED No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
10	243	Exhibit 36 to the Hung Declaration	UNSEALED No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
11	243	Exhibit 38 to the Hung Declaration	SEALED Narrowly tailored to confidential business information.
12	243	Exhibit 40 to the Hung	Designations in blue at Docket Only sealed portions

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1	Declaration	No. 243-25 SEALED; all other designations UNSEALED.	narrowly tailored to confidential business information.
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3	243 Exhibit 42 to the Hung Declaration	SEALED	Narrowly tailored to confidential business information.
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5	243 Exhibit 43 to the Hung Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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7	243 Exhibit 49 to the Hung Declaration	SEALED	Narrowly tailored to confidential business information.
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9	243 Exhibit 50 to the Hung Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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11	243 Exhibit 51 to the Hung Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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13	243 Exhibit 52 to the Hung Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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15	243 Exhibit 25 to the Declaration of Richard S.J. Hung	Designations in blue at Docket No. 243-17 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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17	243 Exhibit 26 to the Declaration of Richard S.J. Hung	Designations in blue at Docket No. 243-18 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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19	243 Exhibit 46 to the Declaration of Richard S.J. Hung	Designations in blue at Docket No. 243-28 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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21	243 AirWatch, LLC's Motion to Strike	Designations in blue at Docket No. 243-4 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business
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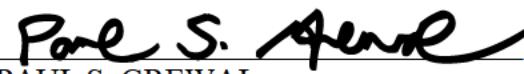
			information.
243	Exhibit 21 to the Declaration of Joshua A. Hartman	Designations in blue at Docket No. 247-1 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
243	Exhibit 22 to the Declaration of Joshua A. Hartman	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
243	Exhibit 23 to the Declaration of Joshua A. Hartman	Designations in blue at Docket No. 243-12 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
243	Exhibit 20 to the Hartman Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
243	AirWatch, LLC's Motion to Exclude Testimony of Roy Weinstein and Hugh Smith	Designations in blue at Docket No. 243-5 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
243	Exhibit 1 to the Declaration of Christopher J. Wiener	Designations in blue at Docket No. 243-37 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
243	Exhibit 2 to the Wiener Declaration	Designations in blue at Docket No. 243-38 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
243	Exhibit 3 to the Wiener Declaration	SEALED	Narrowly tailored to confidential business information.
243	Exhibit 5 to the Wiener Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
243	Exhibit 6 to the Wiener Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).

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1	243	Exhibit 8 to the Wiener Declaration	Designations in blue at Docket No. 243-42 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
2	243	Exhibit 10 to the Wiener Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
3	243	Exhibit 11 to the Wiener Declaration	SEALED	Narrowly tailored to confidential business information.
4	243	Exhibit 12 to the Wiener Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
5	243	Exhibit 13 to the Wiener Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
6	243	Exhibit 14 to the Wiener Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
7	243	Exhibit 15 to the Wiener Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
8	243	Exhibit 16 to the Wiener Declaration	SEALED	Narrowly tailored to confidential business information.
9	243	Exhibit 17 to the Wiener Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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**SO ORDERED.**

Dated: April 9, 2015

  
PAUL S. GREWAL  
United States Magistrate Judge